

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

United States of America,

Plaintiff

v.

Festus Onyemaliosia Ebonka,

Defendant

Case No.: 2:22-cr-00156-CDS-NJK-1

Order Adopting Magistrate Judge's  
Report and Recommendation

[ECF No. 21, 26]

Defendant Festus Onyemaliosia Ebonka was charged with thirteen counts of healthcare fraud after the grand jury returned a true bill for indictment. ECF No. 1. Ebonka moves to dismiss that indictment arguing that: 1) evidence establishes the affirmative defense of entrapment by estoppel; and 2) the government cannot prove *mens rea* to support a conviction for fraud beyond a reasonable doubt. Mot. to Dismiss, ECF No. 21. The government opposes his motion. Resp. Br., ECF No. 24.

United States Magistrate Judge Nancy J. Koppe recommends that I deny Ebonka's motion to dismiss the indictment because granting Ebonka's motion would essentially amount to granting Ebonka summary judgment in a criminal case. R&R, ECF No. 26. Judge Koppe finds that to fully evaluate an entrapment-by-estoppel defense, the court would have to consider evidence and facts beyond the face of the indictment. *Id.* at 3. But as the Ninth Circuit directed in *United States v. Lyle*, a court considering a motion to dismiss an indictment is "bound by the four corners of the indictment." *United States v. Lyle*, 742 F.3d 434, 436 (9th Cir. 2014) (quoting *United States v. Boren*, 278 F.3d at 914 (9th Cir. 2002)). Thus, Judge Koppe concludes that dismissal of the indictment is unwarranted in this case.

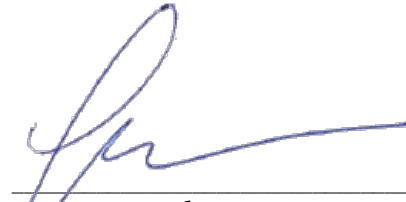
1 Under this district's local rules, the deadline for Ebonka to object to the R&R was April  
2 25, 2023. LR IB 3-1(a). As of the date of this order, no objections were filed, and the time for  
3 filing an objection has elapsed. "[N]o review is required of a magistrate judge's report and  
4 recommendation unless objections are filed." *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D.  
5 Ariz. 2003); *see also Thomas v. Arn*, 474 U.S. 140, 150 (1985); *United States v. Reyna-Tapia*, 328 F.3d  
6 1114, 1121 (9th Cir. 2003). Because I find no error with Judge Koppe's conclusion that the court  
7 should adhere to well-established Ninth Circuit case law, and with no objection filed, I adopt  
8 the R&R in its entirety.

9 **Conclusion**

10 IT IS THEREFORE ORDERED that Judge Koppe's report and recommendation [ECF  
11 No. 26] is ADOPTED in its entirety.

12 IT IS FURTHER ORDERED that defendant's motion to dismiss the indictment [ECF  
13 No. 21] is DENIED.

14 DATED: May 25, 2023

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17 Cristina D. Silva  
18 United States District Judge  
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